

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ROBERT M. MERRILL,

Plaintiff,

v.

CROWN LIFE INSURANCE  
COMPANY, AND/OR REASSURE  
AMERICA LIFE INSURANCE  
COMPANY,

Defendant.

NO: 13-CV-0110-TOR

PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Motion for Protective Order Regarding Confidential Material (ECF No. 9). Pursuant to the parties' stipulation, the Court hereby enters the following protective order:

This Protective Order is issued to facilitate document disclosure and production under the Local Rules of this Court and Fed. R. Civ. P. 26(c)(1)(G). Unless modified pursuant to the terms contained in this Order, this Order shall remain in effect through the conclusion of this litigation.

1 In support of this Order, the Court finds:

2 1. Documents or information containing confidential proprietary and  
3 business information and/or trade secrets; medical records; and financial records  
4 (“Confidential Information”) that bear significantly on the parties claims or  
5 defenses are likely to be disclosed or produced during the course of discovery in  
6 this litigation;

7 2. The parties to this litigation may assert that public dissemination and  
8 disclosure of Confidential Information could severely injure or damage the party  
9 disclosing or producing the Confidential Information and/or could place that party  
10 at a competitive disadvantage;

11 3. The parties may also assert that their right to privacy with respect to medical  
12 records outweighs the public interest in access to court records. While Washington  
13 citizens have an interest in access to court records, they also have a significant  
14 interest in preserving the confidentiality of medical records. *Koenig v. Thurston*  
15 *County*, 175 Wn. 2d 837, 868, 287 P.3d 523 (2012); *Bennett v. Smith Bundy*  
16 *Berman Britton*, P.S., 176 Wn. 2d 303, 313, 291 P.3d 886 (2013).

17 4. To protect the respective interests of the parties and to facilitate the  
18 progress of disclosure and discovery in this case, the following Order should issue:

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1 IT IS THEREFORE ORDERED THAT:

2 1. Access to Confidential Information: Documents and information  
3 protected under this order may not be disclosed to anyone other than the following  
4 persons who are authorized to have access solely for purposes of this litigation:

5 a. Parties, or designated representatives for this litigation, and their  
6 counsel;

7 b. Persons employed by counsel necessarily involved in this case;

8 c. The Court, jurors selected to hear this case, court personnel, court  
9 reporters, and the like.

10 2. This Order pertains only to the handling of Confidential documents  
11 which are produced in discovery in this litigation. It has no effect on the use of or  
12 handling of information already in Defendants' files as it relates to on-going  
13 business administration and operations and nothing in this Order shall in any way  
14 apply to Defendant's ongoing processing of any benefit claim(s) by Plaintiff. This  
15 Order is to be applied prospectively only and has no effect with regard to  
16 disclosures to any person prior to its entry.

17 3. Limited Access to Confidential Information:

18 a. Experts: In the event any party retains an expert for the purpose of  
19 assisting in the preparation and trial or hearing of this case, whether or not the  
20 expert testifies, said expert may have access to those certain documents and

1 information otherwise protected under this order that may be pertinent to the area  
2 of expertise for which the expert is retained.

3 b. Witnesses: A witness whose deposition is to be taken, or who testifies  
4 at trial, may have limited access to those certain documents and information  
5 otherwise protected under this order to the extent necessary for that witness'  
6 testimony.

7 c. Procedure: Any person for whom limited access is required, as set  
8 forth above, shall be shown a copy of this Order, shall be advised that he/she is  
9 bound by its terms, and shall sign a Statement of Confidentiality attached to this  
10 Stipulation as Exhibit A. Refusal of any person to sign the Statement of  
11 Confidentiality shall not constitute a waiver of confidentiality.

12 d. Counsel for the Party who retains the expert or calls the witness is  
13 responsible to carry out the requirements of 3.c. above and shall recover all copies  
14 of protected documents and information from the expert or witness when access is  
15 no longer needed.

16 4. Protection of Confidential Information:

17 a. Any Confidential Information provided or obtained in the course of  
18 this litigation, including disclosures made through any process of discovery, ADR,  
19 trial or by order of the court shall be used solely for the purpose of this litigation  
20 and for no other purpose. "In the course of this litigation" includes all disclosures

1 made by either party.

2       b. All parties and counsel shall hold the Confidential Information in  
3 confidence and shall not disseminate, disclose, publish or otherwise communicate  
4 or use the information, whether an original document or copy, directly or  
5 indirectly, except in the pending matter and as necessary to enforce the terms of  
6 this Stipulated Protective Order.

7       c. If a party wishes to use confidential documents to support or oppose a  
8 motion, the confidential documents will be filed under seal.

9       d. With respect to confidential materials to be used at trial, the Court  
10 ordinarily will treat trial exhibits and testimony as a matter of public record, except  
11 as provided in Federal Rule of Civil Procedure 5.2 and Local Rule CR 5.2. The  
12 parties, however, shall meet and confer before the Pretrial Conference to attempt to  
13 reach an agreement about the confidentiality of information to be used at trial and a  
14 method for maintaining the confidentiality of such information. At the Pretrial  
15 Conference, the parties may present, by motion or stipulation, a proposed method  
16 for maintaining confidentiality. Nothing in this paragraph, however, shall be  
17 construed as constraining the Court's authority to treat trial exhibits and testimony  
18 as matters of public record.

19       e. All persons who gain access to Confidential Information under the  
20 terms of this Order shall return all copies of same to the party to which it pertains

1 after all orders made in connection with this case have become final or when  
2 access is no longer required, whichever occurs first.

3 5. Designation of Confidential Information: The following documents  
4 and information are hereby designated as Confidential and are automatically  
5 protected under this Order without further designation:

6 a. Medical and health care records of Plaintiff in possession of any  
7 party;

8 b. Medical and health care records of Merrill Orthodontic patients in  
9 possession of any party.

10 c. Financial Records of Plaintiff in possession of any party.

11 6. Designation of Confidential Information:

12 a. Any other document or information that might reasonably jeopardize  
13 a person's right to privacy if disclosed, may be protected under the terms of this  
14 Order by a Party marking the document with the word "Confidential" before  
15 disclosing a copy of the document or disclosing the information to the other Party.

16 b. Inadvertent failure to designate a document as "Confidential" may be  
17 corrected by supplemental written notice given as soon as practicable.

18 7. Challenge to Confidential designation: Any Party who challenges the  
19 designation of any document or information as either Confidential may seek  
20 appropriate relief from the Court by motion. The party who claims the matter is

1 Confidential carries the burden of proving the designation is appropriate. All  
2 interested parties will confer or attempt to confer with other affected parties in a  
3 good faith effort to resolve the dispute without court action before proceeding with  
4 a motion. Any challenged document or information shall retain its protected status  
5 unless modified by agreement in writing by the parties or by further Order of this  
6 Court.

7 8. Retention of Jurisdiction: This Court retains jurisdiction during and  
8 after this action is concluded for the purpose of enforcing this Order. This Order  
9 shall survive the termination of this action to insure that Confidential documents or  
10 information do not become known to the public.

11 9. Any violation of Order or lack of good faith in carrying out its terms  
12 may result in the imposition of sanctions.

13 **IT IS SO ORDERED:**

14 The District Court Executive is hereby directed to enter this Order and  
15 provide copies to counsel.

16 **DATED** December 18, 2013.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge

EXHIBIT A

**STATEMENT OF CONFIDENTIALITY**

The undersigned acknowledges receipt of the attached **PROTECTIVE ORDER REGARDING CONFIDENTIAL INFORMATION**, that he/she has read and understands the attached order, and agrees to be bound by the order.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name